IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.438 OF 2005
IN
SUMMARY SUIT NO.1443 OF 2005

Urmila Jayantilal Solanki ....Plaintiff
V/s.
Natwarlal Bhimraj Parmar and another ....Defendants

Mr.J.G. Shukla i/b Mr.G.H. Shukla for the plaintiff.
Mr.L. C. Joshi for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 29TH NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover a sum of Rs.2,89,000/- together with interest.

2. The suit is based on a Writing termed as declaration-cum-undertaking. By the said writing the defendant has admitted and acknowledged that a sum of Rs.3,00,000/- was lent and advanced by plaintiff to him. Post dated cheques were issued, as stated in the writing.

3. That the writing was executed, is admitted. That the cheques were issued is also admitted.

4. The defence is that, in fact only an amount of Rs.1,50,000/- was payable and not Rs.3,00,000/- as stated in writing. This defence is difficult to

accept. There is no valid explanation why the declaration was signed acknowledging the receipt of Rs.3,00,000/-.

5. The other defence is that a sum of Rs.1,50,000/- has been repaid.

6. Exhibit I to the affidavit is a statement of the cheques allegedly issued by the plaintiff to the defendants aggregating to Rs.1,50,000/-. It was contended that these cheques were issued by the defendant to the plaintiff's husband. At this stage, I will grant the defendants the benefit of the doubt in respect of his contention that payments to the plaintiff's husband were in fact on behalf of the plaintiff in discharge of the suit debt. Accordingly, as regards the same, I propose granting unconditional leave.

7. However, even in respect of the alleged payments at exhibit - I it is pertinent to note that admittedly a cheque dated 09/11/2004 bearing No.433718 was dishonoured. The original cheque is in the custody of the plaintiff. A cheque dated 22/09/2004, bearing No.430269 was only for the sum of Rs.11,000/- and not of Rs.21,000/-. A cheque dated 23/02/2004

bearing No.413774 allegedly of the sum of Rs.19,000/-, was not even presented. The original blank cheque is still in the plaintiff's custody. Thus, even as alleged at Exhibit 1 of the affidavit in reply, a sum of Rs.37,000/- was clearly unpaid.

8. In the circumstances, the following order is passed :-

a) The summons for judgment is made absolute and the suit is decreed in the sum of Rs.1,87,000/- together with interest thereon at the rate of 12% per annum from the date of filing of the suit till payment and/or realisation.

b) The Defendants are granted unconditional leave to defend the suit, in respect of balance claim.

c) The suit is transferred to the list of commercial causes, in respect of balance claim.

d) The Defendants to file their written statement within four weeks from today.

e) Discovery and Inspection to be completed within six weeks thereafter.

f) Summons for Judgment stands disposed of accordingly.